

Appl. No. : 10/667,580  
Filed : September 22, 2003

### **REMARKS**

This is responsive to the Examiner's Office Action dated June 20, 2007. Applicants have hereby amended Claim 2. Claims 1 and 3-12 have been canceled without prejudice or disclaimer. New Claims 21-34 have been added. Support for the amendment to the Claims and newly added Claims is found throughout the specification and figures as originally filed. More particularly, support for the amendment to Claim 2 can be found, *inter alia*, in FIG. 3. Support for newly added Claim 21 can be found, *inter alia*, at paragraphs [0025], [0044], [0051], [0054] and [0061] of the specification, and in FIG. 3. Support for newly added Claims 22-24 can be found, *inter alia*, at paragraph [0045]. Support for newly added Claims 25 and 26 can be found, *inter alia*, at paragraph [0054]. Support for newly added Claim 27 can be found, *inter alia*, at paragraph [0042]. Support for newly added Claim 28 can be found, *inter alia*, at paragraph [0043]. Support for newly added Claims 29 and 30 can be found, *inter alia*, at paragraphs [0053] and [0063]. Support for newly added Claims 31-33 can be found, *inter alia*, at paragraph [0053]. No new matter has been added. Support for newly added Claim 34 can be found, *inter alia*, at paragraph [0045]. Reconsideration of the application in view of the foregoing amendment, newly added claims and following comments is respectfully requested.

The status of all claims and the text of all pending claims are shown above. The specific changes to the amended claim are shown by strikethrough or double bracketing for any deletions, and underlining for any insertions.

### **Response to Claim Rejections**

The Examiner rejected Claims 2 and 13-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,626,858 B2 to Lynch et al. (hereafter "Lynch") in view of U.S. Patent No. 5,300,020 to L'Esperance, Jr. (hereafter "L'Esperance").

Applicants respectfully traverse these rejections and the Examiner's characterization of the cited references on the bases set forth below. In this case, to advance prosecution, independent Claim 2 has been amended, as shown above. Support for this amendment can be found in the specification and drawings, for example, see FIG. 3. No new matter has been added. Applicants reserve the right to pursue any of the prior versions of the claims in one or more continuing applications and/or at a later date.

Amended independent Claim 2 is directed to an implant for treating glaucoma in an eye and recites, among other things (emphasis added):

a plurality of *longitudinally spaced openings* in the outflow portion, the openings allowing fluid to communicate from a lumen within the outflow portion to a location outside the outflow portion;

and

wherein said *longitudinal implant axis extends through the trabecular meshwork* of the eye and is generally *orthogonal to Schlemm's canal during said fluid communication*.

The combination of Lynch and L'Esperance fails to disclose, among other elements, such an arrangement of a "longitudinal implant axis" and "longitudinally spaced openings" as set forth in Claim 2. Thus, the applied combination fails to support a *prima facie* case of obviousness and withdrawal of the rejection is respectfully requested.

Claims 13-20 depend from Claim 2 and are patentable for at least the same reason(s) that Claim 2 is patentable. Moreover, at least some of these claims recite further patentable features. Accordingly, Applicants submit that Claims 2 and 13-20 are in condition for allowance.

#### **New Claims 21-34**

Applicant has added new Claims 21-36 directed toward an implant having inflow and outflow portions, a plurality of openings, and an anchor member. Each of these claims recites that the implant comprises a substantially straight, rigid, elongate body having at least one inlet and a plurality of outlets. Each claim further recites that the inlet and the outlets communicate via one or more lumens that have a sufficient length to extend from an anterior chamber of an eye to a physiologic outflow pathway of the eye. Lynch and L'Esperance each fail to discuss, *inter alia*, such implant structure. Accordingly, Applicants respectfully submit that the newly added claims are allowable in the form presented.

#### **Conclusion**

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks

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referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Additionally, Applicants have not presented arguments concerning whether the applied references can be properly combined in view of the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper reason exists to combine these references and to submit evidence relating to secondary considerations supporting the non-obviousness of the ocular implant recited by the pending claims.

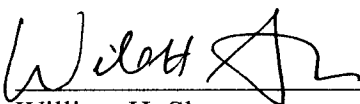
Applicants have made a good faith effort to respond to the outstanding Office Action. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is cordially invited to contact Applicants' attorney, at the telephone number below, to resolve any such issues promptly.

Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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